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***Via Certified Mailing - Return Receipt***

October 25, 2012

KKMI Sausalito, LLC  
420 Harbor Drive  
Sausalito, CA 94968

Clipper Yacht Company, LLC  
c/o Kenneth C. Pedersen Registered Agent  
310 Harbor Drive  
Sausalito, CA 94968

KKPM LLC  
c/o Paul Kaplan, Registered Agent  
530 W. Cutting Blvd.  
Richmond, CA 94804

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act ("Clean Water Act")**

Dear Owners, Operators and/or Facility Managers:

## **NOTICE**

This Notice is provided on behalf of Northern California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at two San Francisco Bay Area marine repair and maintenance facilities located at 420 Harbor Drive in Sausalito, see Attachment A, and 530 West Cutting Boulevard in Point Richmond, see Attachment B. Notice is being sent to KKMI Sausalito, LLC, Clipper Yacht Company, LLC and KKPM, LLC (referred to collectively as "Dischargers") as the responsible owners, officers, operators or managers of one or both of these facilities.

This Notice addresses the unlawful discharge of pollutants from the Sausalito facility into Richardson Bay, and the unlawful discharge of pollutants from the Richmond facility into the Santa Fe Channel and Richmond Harbor. Both Richardson Bay and Richmond Harbor flow directly into San Francisco Bay.

CWA § 505(b) requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur by the Dischargers. Consequently, the Dischargers are placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Dischargers for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the incidents of non-compliance identified and outlined in this Notice.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Sausalito Facility - To comply with this requirement, River Watch notices the Dischargers of the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of the National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"), relating to marine facility services for the maintenance and repair of vessels.

KKMI Sausalito, LLC filed an NOI agreeing to comply with the terms and conditions of the General Permit. The NOI was approved by the State Board on or about March 29, 2010 and KKMI Sausalito, LLC was assigned Waste Discharger Identification ("WDID") number 2 211022576. River Watch contends the Dischargers have failed and are failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate SWPPP, the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

The 2010-2011 and 2011-2012 Annual Reports submitted to the State Board and Regional Board demonstrate that the Dischargers have failed and are failing to eliminate discharges of non-authorized storm water from the facility. Complaints from citizens have alleged discharges from this facility are not being filtered, captured, or measured. Non storm water discharges to adjacent waters are frequently seen.

The Dischargers have discharged and continue to discharge storm water with unacceptable levels of copper from the Sausalito facility in violation of the General Permit. Sampling and analysis results reported to the Regional Board in the Discharger's self-monitoring reports confirm discharges of copper in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance or a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9<sup>th</sup> Cir. 1988).

Richmond Facility – Based on information thus far received, River Watch believes pollutants are discharged from vessel repair and maintenance operations including, but not limited to, paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc). River Watch contends that the Dischargers, who have operated this facility since 1996, have no individual facility NPDES permit for these discharges, and have failed and are failing to apply for coverage under the General Permit. These discharges are in violation of the CWA's prohibition against discharging a pollutant from a point source to a water of the United States, in this instance Santa Fe Channel, Richmond Harbor and San Francisco Bay, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, the Dischargers have failed to prepare and implement a SWPPP, failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the Richmond facility.

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives within this notice describing discharges of pollutants from the Dischargers' marine facility services to waters of the United States in violation of the General Permit and CWA § 301(a). These narratives describe with particularity specific incidents which may not have been reported in public reports and other public documents in the Dischargers' possession or otherwise available to them. River Watch incorporates by reference the records cited in this notice from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are KKMI Sausalito, LLC, the owners and/or operators of the marine facility services, all of the employees of KKMI Sausalito, LLC responsible for compliance with the CWA and compliance with any applicable state and federal regulations and permits, and the assessed owners of the two properties, known to River Watch to be Clipper Yacht Company, LLC and KKPM, LLC.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the facility at 420 Harbor Drive in the City of Sausalito, California 94965, including the adjoining waters of the tidally influenced Richardson Bay and the waters of San Francisco Bay; and, the permanent address of the facility at 530 West Cutting Blvd in the City of Richmond, California 94804, including the adjoining waters of the tidally influenced Santa Fe Channel, Richmond Harbor and the waters of the San Francisco Bay. All of these waters are waters of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from March 29, 2010 to October 25, 2012 for the Sausalito facility and October 25, 2007 to October 25, 2012 for the Richmond facility. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch." River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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Law Offices of Jack Silver  
David Weinsoff, Esq.  
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## **STATUTORY BACKGROUND**

CWA § 301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. §1342.

CWA § 402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board ("State Board") to issue NPDES permits including general NPDES permits in California.

The State Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground water that adversely impact

human health or the environment. Receiving Water Limitation C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board water quality control plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must comply with the standards of Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT"). The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Section A(2)]. The SWPPP's BMPs must implement BAT and BCT [Section B(3)]. The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP [Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Section A(4)]; a list of significant materials handled and stored at the site [Section A(5)]; a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Section A(6)]. The SWPPP must include an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective [Section A(7), (8)]. The SWPPP must be periodically evaluated to ensure effectiveness and must be revised where necessary [Section A(9),(10)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Section B(7).

Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Board. Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). California Toxic Rule limitations are also applicable to all non storm water and storm water discharges. (40 C.F.R. part 131).

The Regional Board has established water quality standards for the San Francisco basin. This water quality control plan, or "Basin Plan," includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

## VIOLATIONS

River Watch contends that between October 25, 2007 and October 25, 2012 (Richmond facility) and between March 29, 2010 and October 25, 2012 (Sausalito facility) the Dischargers violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations are discussed herein are derived from eye witness reports and records publically available, or records in the possession and control of KKMI Sausalito, LLC. Furthermore, River Watch contends these violations are continuing.

Richmond Facility - River Watch contends the Dischargers are engaged in ongoing violations of the CWA by unlawfully discharging pollutants into storm water from the facility without coverage under either the General Permit or an individual NPDES permit.

Sausalito Facility - Since obtaining coverage under the General Permit on March 29, 2010 for the Sausalito facility, only three (3) water quality samples have been reported to the Regional Board.<sup>1</sup> The General Permit requires monthly testing from October to May. The Dischargers violated the water quality limitation for copper established by the EPA under the California Toxics Rule (40 C.F.R. § 131.38) on the insufficient number of tests that the Dischargers have performed:

<u>Date of Sample</u>	<u>Sample Result</u>	<u>CTR Maximum Concentration / Saltwater</u>
3/10/11	0.14 mg/l	0.0048 mg/l
5/2/11	0.063 mg/l	0.0048 mg/l
2/06/12	0.064 mg/l	0.0048 mg/l

These incidences of violation of the General Permit are of particular concern since according to KKMI Sausalito, LLC's own website it "captures and filters 100% of the stormwater before entering the Bay." (<http://www.kkmi.com/locations/sausalito/>; October 12, 2012.) The reported results exceeding the California Toxic Rule are from post filtered discharge. However, citizen complaints have indicated that Dischargers fail to capture all the contaminated runoff from the facility and thus the non-filtered discharge levels of pollutants may be far in excess of the filtered materials and likely include exceedances of zinc and other toxic metals. Furthermore, River Watch has received complaints that KKMI Sausalito, LLC fails to follow the requirements of the General Permit in its sampling protocols including failing to capture "first flush" samples and failing to sample from all the outfalls of the facility.

Richardson Bay is an ecologically critical waterway, and one of the most pristine estuaries on the Pacific Coast in spite of its urbanized periphery, supporting extensive eelgrass areas and sizable undisturbed intertidal habitats. It is a feeding and resting area for a panoply of estuarine and pelagic birds, while its associated marshes and littoral zones support a variety of animal and plant life. Richardson Bay has been designated an "Important Bird Area," based upon its large number of annual bird visitors and residents, the sightings of California clapper rail and its strategic location in the Pacific Coast flyway. The

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Note that the samples reported do not include those from the first storm event of the 2010-2011 and 2011-2012 wet seasons or any date close to the first storm events, as reported by the National Weather Service Forecast Office for "Downtown San Francisco F-6" ([http://www.wrh.noaa.gov/mtr/SFD\\_F6/sfd\\_f6.php](http://www.wrh.noaa.gov/mtr/SFD_F6/sfd_f6.php)).

Bay's waters are subject to a "no discharge" rule to protect the elaborate and fragile ecosystems present, including a complex fishery, diverse mollusk populations and marine mammals such as the harbor seal.

### **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Dischargers into compliance with the CWA and reduce the biological impacts of their non-compliance upon public health and the environment surrounding both facilities:

1. Prohibition of the discharges of pollutants including, but not limited to, paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc) from the vessel repair and maintenance activities.
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards" (EPA Office of Water, EPA-833-F-06-033, December 2006; ([www.epa.gov/npdes/pubs/sector\\_r\\_shipbuilding.pdf](http://www.epa.gov/npdes/pubs/sector_r_shipbuilding.pdf))).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.

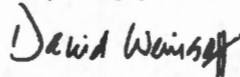
### **CONCLUSION**

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$32,500 per day/per violation for all violations occurring through January 12, 2009, and \$37,500 per day/per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. Members of River Watch use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Dischargers' violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against the Dischargers for the violations of the CWA described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Dischargers wish to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



David Weinsoff

DW:lhmm

cc: Administrator  
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## ATTACHMENT A

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## ATTACHMENT B